

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE CITY COUNCIL OF THE CITY OF SAINT PAUL, MINNESOTA

In the Matter of the License Application of
5005 Properties, Inc., d/b/a Hillcrest
Bingo, for the Premises Located at 1610
White Bear Avenue, Saint Paul,
Minnesota.

FINDINGS OF FACT,
CONCLUSIONS AND
RECOMMENDATION

The above-entitled matter came on for hearing before Administrative Law Judge (ALJ) Jon L. Lunde commencing at 10:00 a.m. on Thursday, April 9, 1998 at the City Hall Annex in Saint Paul, Minnesota. The hearing was held pursuant to a hearing notice dated March 6, 1998. The record closed on April 27, 1998 when the last authorized brief was filed.

Virginia D. Palmer, Assistant City Attorney, Civil Division, 400 City Hall, 15 West Kellogg Boulevard, Saint Paul, MN 55101, appeared on behalf of the office of license, inspections, and environmental protection (LIEP). Joseph W. Anthony, Fruth & Anthony, P.A., Attorneys at Law, 3750 IDS Center, 80 South Eighth Street, Minneapolis, MN 55402, appeared on behalf of the applicant, Hillcrest Bingo. S. Mark Vaught, Attorney at Law, Suite 700, Six West Fifth Street, Saint Paul, MN 55102-1420, appeared on behalf of the District 2 Community Council.

NOTICE

This Report contains a recommendation and not a final decision. The Saint Paul City Council will make the final decision after reviewing the record and may adopt, reject or modify the Findings of Fact, Conclusions and Recommendation contained herein. Pursuant to Saint Paul Legislative Code Section 310.05 (c-1), the City Council's final decision shall not be made until this Report has been made available to the parties to the proceeding and the applicant has been provided an opportunity to present oral or written arguments alleging error on the part of the administrative law judge in the application of the law or the interpretation of the facts and an opportunity to present argument relating to any recommended adverse action. The applicant and any interested parties should contact the Saint Paul City Council, 310 City Hall, Saint Paul, MN 55102 to ascertain the procedure for presenting argument to the council.

STATEMENT OF ISSUE

Under the city's zoning code, businesses in a shopping center must have an adequate number of parking spaces. When a business has a parking deficiency, the zoning code authorizes it to count the same spaces used by other businesses if their peak parking hours do not overlap. Did the applicant meet its burden of showing that the number of such dual-function parking spaces in the center meets or exceeds its 52-space deficiency?

Based upon all of the files, records and proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. On October 28, 1997, Hillcrest filed an application with the city to obtain a Class 3 bingo hall license for premises located at 1610 White Bear Avenue North, in Saint Paul. The application was assigned to William F. Gunther for handling. Gunther is a program manager in the city's office of license, inspections, and environmental protection (LIEP). In that capacity he is in charge of the gambling control section and serves as a project facilitator responsible for the speedy review and determination of license applications.

2. On December 8, 1997, Kenneth Ford, planning administrator of the planning and economic development (PED) department, notified Hillcrest that its application was approved. Ford had no objection to the proposed bingo hall provided that all necessary permits and licenses were obtained.^[1] On December 10, 1997, Lawrence R. Zangs, the city's zoning technician, notified Hillcrest that its application for licensure would be approved on five conditions. One of the conditions required Hillcrest to submit an annual statement documenting the hours of operation of the businesses using the parking lot to verify continued compliance with the shared parking arrangement Ford authorized for the bingo hall.^[2] Hillcrest agreed to the conditions placed on its bingo hall license.

3. The city council considered Hillcrest's application at a council meeting on February 25, 1998. At that meeting, representatives of the District 2 Community Council^[3] objected to the license application. It alleged that some parking spaces at the rear of the center were unusable and that the peak uses of shared parking spaces overlapped thereby making the shared use of those spaces unlawful or impracticable. Because of the objections that were raised at the meeting, the council ordered a hearing before an administrative law judge on the adequacy of parking facilities for the bingo hall. This hearing followed.

4. Parking requirements in the city are governed by the St. Paul Legislative Code. The code generally requires off-street parking facilities for businesses and establishes parking requirements. Ford and Zangs approved Hillcrest's license application under the shared parking provisions in the zoning code. Shared parking allows a business with a parking deficiency to use (count) the same parking spaces used by other businesses when their peak parking hours do not overlap. In that way, off-street parking requirements can be minimized. This permits the optimal use of land and reduces property costs to the businesses involved.

5. Hillcrest center is a typical commercial development along White Bear Avenue, a heavily traveled commercial street. Most of the center's parking is in the front of the center along White Bear Avenue. The center is bounded by White Bear Avenue on the west; Larpenteur Avenue on the north; Iowa Avenue on the south; and Gary Place, which is partially vacated, on the east. The proposed bingo hall will be located in premises formerly used by Gala Foods near the intersection of Gary Place and East Iowa Avenue in the southeast corner of the center.

6. There are no other licensed bingo halls or bingo operations within two miles of Hillcrest Bingo's proposed operations^[4].

7. Within the center there are approximately 24 separate business premises covering 113,684 square feet^[5]. The tenants, their addresses on White Bear Avenue, the square footage they lease, and the number of parking spaces required of each tenant when Gala Foods was still operating are as follows^[6]:

				<u>REQUIRED</u> <u>OFF-STREET</u> <u>PARKING</u> <u>SPACES</u>
	<u>TENANT</u>	<u>ADDRESS</u>	<u>SQUARE FT</u>	
1.	Gala	1600-1610	22,877	82
2.	Kees Chow Mein	1612	650	5
3.	Snip N Clip	1614	1,300	6
4.	Ronalds Jewelers	1615	1,350	5
5.	Vacant	1618	2,000	7
6.	Office	1618 ½	3,600	13
7.	Snyder Drug	1620	13,879	50
8.	Payless Shoes	1622	4,090	15
9.	Video Update	1624	3,916	14
10.	Park Gift	1626	7,000	25
11.	Subway	1628	1,500	12
12.	Vacant	1630	1,965	7
13.	Simek Meats	1632	3,465	12
14.	Big Dollar	1640	9,600	34
15.	Salvation Army	1654	12,324	44
16.	H&R Block	1660	1,400	5
17.	Tobacco Outlet*	1662	1,500	5
18.	Hair Junction	1664	1,200	4
19.	Pack N Mail	1666	1,500	5
20.	Angelos Pizza	1668	1,600	13
21.	Radio Shack	1670	3,125	11
22.	Best Steak	1676	3,000	24
23.	Apostolic	1678	3,380	12

24.	Big Wheel	1680	6,059	22
25.	Pack N Mail	Warehouse	624	2
26.	Park Gift	Warehouse	<u>780</u>	<u>3</u>
			113,684 ^[7]	437

*formerly Book Zone

In addition to the tenants listed above, the center is occupied by Seymour's Drug. The record does not clearly show if Seymour's Drug is a tenant or if it owns the premises it currently occupies in the center. Seymour's premises are approximately the same size as the premises occupied by the Salvation Army --12,324 square feet. It has, therefore, need for 44 parking spaces when it is open for business.

8. After Hillcrest filed its application, Zangs requested and obtained a site plan of the center and information regarding the center's tenants, such as the square footage each of them leased. The site plan shows the layout of the center, including the location of buildings and parking spaces. Zangs studied the information provided to him and met with Ford to discuss his findings. Both Zangs and Ford concluded that the bingo hall's parking deficiency could be met by the shared use of existing parking spaces.

9. When Hillcrest's application was filed, the center had 380 parking spaces. If the center had been constructed under the current code, it would have been required to have approximately 437 spaces with Gala as a tenant. Hence optimal parking facilities currently do not exist. If Hillcrest is granted a bingo hall license, 52 additional parking spaces will be required because more spaces are needed for bingo halls than grocery stores like Gala Foods^[8]. This 52-space shortfall can be cured if there are 52 other parking spaces whose use will not overlap Hillcrest's use.

10. To determine if 52 spaces will be available to the hall during the times when it is in operation, the spaces of other users whose hours overlap the hall's hours must be subtracted from the total number of spaces in the center (410). If the remainder is 52 or more, the hall's shortfall can be met without any overlaps.

11. The hall will be open from 7:00 p.m. to 11:00 p.m. every day and from 1:00 p.m. to 3:00 p.m. on Sunday. Monday through Friday evenings other tenants, excluding Seymour's Drug, will need 295 spaces.^[9] Because there are 410 spaces in the center, 115 spaces will be available to meet the halls 52-space shortfall (410 minus 295) weeknights from Monday through Friday. In addition, there will be 63 spaces to cover the parking needs of Seymour's Drugs.

12. On Saturdays and Sundays from 7:00 p.m. to 11:00 p.m., other tenants, will need 118 spaces, leaving 292 spaces for the bingo hall.^[10]

13. On Sundays from 1:00 p.m. to 3:00 p.m. the hall will be open. During those hours, other tenants will need 253 spaces, leaving 157 spaces for the bingo hall.^[11]

14. The center is three blocks long. The most southerly block where the hall is located is separated from the other two by East Idaho Avenue. There are 112

parking spaces in front of that block. There are 114 spaces in front of the middle block, and 71 in front of the most northerly block. The remaining 113 spaces are located in the rear of center buildings.

On 17 days between February 27 and April 4, 1998, between 7:00 and 7:30 p.m., the center's manager, Keith Heisick, counted the vehicles in the three front lots. He found the following:

DATE	TOTAL VEHICLES	VEHICLES IN GALA LOT
2/27/98	67	12
2/28/98	35	7
3/1/98	45	7
3/2/98	69	10
3/3/98	93	17
3/4/98	97	21
3/5/98	80	10
3/16/98	47	7
3/17/98	73	17
3/18/98	81	13
3/19/98	92	15
3/20/98	90	12
3/25/98	76	14
3/26/98	106	11
3/30/98	124	14
3/31/98	67	14
4/4/98	111	21

If Hillcrest's application is approved, there generally should be no less than 91 available spaces in the Gala lot alone.

15. When open, the hall has more than 52 spaces that do not overlap the peak parking hours of other businesses in the center.

16. The public will not be able to enter the bingo hall from the rear because the doors will be marked for employees only.

17. The new parking spaces Hillcrest is adding to the center are usable and functional.

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Saint Paul City Council and the administrative law judge have authority to consider Hillcrest's bingo hall license application under the Saint Paul Legislative Code, section 310.05 (1998) and Minn. Stat. § 14.55 (1997).

2. Hearings held under the Saint Paul Legislative Code, section 310.05 (1998) are not contested cases as defined in Minn. Stat. § 14.02, subd. 3 and contested case procedures do not apply to this case except on agreement of all parties.

3. Hillcrest has complied with all relevant substantive and procedural requirements of the Saint Paul Legislative Code.

4. Hillcrest and District 2 received timely and proper notice of the hearing and the issues involved herein, and this matter is, therefore, properly before the administrative law judge.

5. Hillcrest has the burden of proof to establish, by a preponderance of the evidence, that a shared parking arrangement will eliminate the parking deficiency caused by the approval of its bingo hall license. Matter of the City of White Bear Lake, 311 Minn. 146, 247 N.W.2d 901, 904 (1976).

6. Hillcrest's proposed bingo hall is not located within two miles of any other licensed bingo halls for purposes of the Saint Paul Legislative Code, section 403.05(a) (1998).

7. LIEP properly computed the number of additional parking spaces required of Hillcrest if its application is granted in full compliance with the Saint Paul Legislative Code, sections 62.103(d) (1) and (f) (4) (1998).

8. Hillcrest showed that the parking deficiency resulting from the approval of its bingo hall license qualifies for shared parking under the Saint Paul Legislative Code, section 62.103(f) (4) (1998).

9. Section 62.103 (f) (7) of the Saint Paul Legislative Code does not apply to Hillcrest's application.

10. Because Hillcrest has more than 52 parking spaces that do not overlap the peak parking hours of other businesses in the center, it is eligible for a shared parking permit under section 62.103 (f) (4) of the Saint Paul Legislative Code.

11. Ford's approval of Hillcrest's license application was not arbitrary or capricious and it was a reasonable exercise of his discretion under section 62.130 (f) (4) of the Saint Paul Legislative Code.

12. A site plan approved by the planning commission is not required in this case under section 62.103 (b) of the code because no new off-street parking facility is being established and no paving or repaving is involved.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS HEREBY RECOMMENDED: That the Saint Paul City Council GRANT Hillcrest's application for a bingo hall at 1610 White Bear Avenue and add an additional

license condition requiring that access doors to the bingo hall from Gary Place be used by employees only.

Dated this 18th day of June, 1998

JON L. LUNDE
Administrative Law Judge

MEMORANDUM

Parking requirements in the city are governed by a zoning code. Ford and Zangs approved Hillcrest's license application under the shared parking provisions in section 62.103(f) (4) of the Saint Paul Legislative Code. The ordinance allows one or more businesses in the center to use the same parking spaces used by another if their peak parking hours do not overlap. The ordinance states, in part:

When at least one (1) of two (2) or more uses has a parking deficiency and their peak parking hours do not overlap, the planning administrator may permit the dual function of their off-street parking spaces as long as peak parking hours for the uses do not overlap and the uses within the building do not change and thereby require additional off-street parking. * *

Zangs first step in reviewing Hillcrest's application was to determine if it met parking requirements in the zoning code. He properly determined that 82 additional parking spaces would be needed as a result of replacing a portion of Gala's former premises with a bingo hall. He reduced the deficiency to 52 spaces because Hillcrest is adding 30 new parking spaces to the rear of the center along Gary Place.

Once Zangs determined that 52 new spaces were required to license the bingo hall, he reviewed the hours of other tenants in the center to determine when they would be open. In determining peak parking hours Zangs looked primarily at the hours the businesses in the center were open. He concluded, based on his review and his meetings with Zangs, that Hillcrest's 52-space shortfall would be met by shared parking.

District 2 objects to Ford's approval of Hillcrest's application on two general grounds. First, it argues that Ford's approval did not comply with the code and was, therefore, an abuse of discretion requiring disapproval of Hillcrest's application. The alleged abuse of discretion consists of Ford's failure to investigate the application, relying instead on information Zangs gathered; Zangs failure to verify information provided by the applicant, such as the square footage of buildings and the hours of the businesses in the center; Ford's inconsistent and contrary testimony concerning the applicability of section 60.103 (f) (7) to this matter; and Zangs failure to consider Seymour Drugs when deciding if the bingo hall will have a parking shortfall.

Ford's reliance on Zangs investigation and on factual information provided by the applicant does not evince an abuse of discretion. Although Ford had the power to approve or disapprove the application, nothing in the code required him to personally investigate it. City officials frequently must rely on other city personnel to assist them in performing their duties. Furthermore, Zangs was no novice. He is a long-term city zoning official and personally visited the center as part of his investigation. Ford did not visit the site, but he is also familiar with it. Following their usual practice, Zangs and Ford jointly reviewed the site plan and information obtained from Hillcrest before approving the application. The procedure they followed does not evince an abuse of discretion.

Ford and Zangs did rely on factual information submitted by Hillcrest and did not verify the information provided. Although they obtained a certified site plan showing the location of parking facilities, the site plan does not show the square footages of the various establishments in the center and their business hours were not verified. Better practice would have required the site plan to show the square footages of all businesses in the center and the dimensions of the buildings and parking spaces. Nonetheless, reliance on the applicant's information was not an abuse of discretion. There was no reason for Ford to question Hillcrest's information and the information Hillcrest provided about the businesses' hours of operation was consistent with information District 2 obtained shortly before the hearing.

The most troublesome issue raised by District 2 relates to Seymour's Drugs. Seymour's was listed as a tenant in the center at 1656 White Bear Avenue on a tenant list Hillcrest supplied.^[12] However, it is not a listed tenant on Hillcrest's 1997 rent roll.^[13] At the hearing, Ann Woods, a community organizer for District 2, testified that Seymour's owns its own business. In Hillcrest's brief, it argued that there is no evidence in the record showing that any spaces in the center were dedicated to Seymour's "or that it has any claim on any spaces in the parking lot that are not otherwise available for common use."^[14] If Seymour's is a tenant, as Hillcrest suggests, why didn't Hillcrest provide the city with its square footage and hours of operation? And why didn't Zangs use or gather information relating to Seymour's square footage and parking needs in determining whether approval of Hillcrest's application is appropriate; that is, in determining whether the bingo hall will have a parking shortage? The record contains no answer.

The record shows^[15] that Seymour's peak hours extended to 8:00 p.m. Monday through Friday. Its hours, therefore, overlap the bingo hall's at those times. This would increase the number of hours needed by tenants and reduce the number of hours available for dual parking those days. The record does not definitively show if there are enough spaces remaining to meet the bingo hall's 52-space shortfall, but the ALJ is persuaded that there is.

In a building plan designated "Hillcrest Shopping Center"^[16] the tenants are listed and their relative sizes are shown. There is no definitive evidence that the building plan is drawn to scale, but the plan shows the relative size of each business, and businesses with similar sizes have similar square footages. Hence, there is a reasonable inference that Seymour's contains about as many square feet as the

Salvation Army property -- 12,324. That will require 44 parking spaces (12,324 divided by 280) Monday through Friday. It will also increase the parking needs of the center's tenants at 7:00 p.m. to 339 spaces (295 plus 44), leaving 71 spaces to cover the hall's 52-space deficit (410 minus 339). At other times Seymour's Drug will not overlap with the bingo hall's hours of operation. Under the circumstances, the ALJ is persuaded that the bingo hall will have more than enough dual purpose parking spaces available to meet its parking shortfall and that its bingo license application should be granted under section 62.103 (f) (4).

District 2's second argument is that section 60.103 (f) (4) is inconsistent with the language in section 60.103 (f) (7). The latter states, in part, as follows:

When any land or building is used for two (2) or more distinguishable uses, or when owners or managers of a group of buildings in a contiguous area wish to provide parking cooperatively through a shared parking agreement, the planning commission may approve a shared off-street parking facility permit. The number of off-street spaces required to serve the combination of all uses shall be determined in accordance with this section. The uses to which this section may be applied are: Office, retail, restaurant, cinema, residential, and/or hotel. The methodology used to determine the minimum number of shared off-street spaces shall be the department of planning and economic development's current shared parking computer program, which is based on the Urban Land Institute's (ULI) Model Shared Parking Program. All mixed use developments using this section shall meet the standards and requirements of the PED shared parking program subject to site plan approval as hereinafter set forth and except as otherwise amended herein. The following conditions shall apply to any shared parking facility for mixed uses:

* * *

Nothing in subsection (f) (7) precludes an applicant from applying for a shared parking permit under subsection (f) (4). If an applicant meets the requirements of (f) (4) and the planning administrator determines that it should be approved, the permit can be issued under the plain language of subsection (f) (4). Because the applicant chose to proceed under subsection (f) (4), meets the criteria in that subsection, and has obtained the planning administrator's approval, the shared parking permit may be issued. Subdivision (f) (4), which was enacted after subsection (f) (7), frees an applicant seeking approval for the dual function of off-street parking from the very elaborate procedures in subsection (f) (7) which, among other things, does not mention peak parking hours, and does not determine the number of shared parking spaces using the criteria in subsection (f) (4). Both Zangs and Ford have applied subsection (f) (4) consistently to existing shopping centers facing a change in tenants.

District 2 argued that the "totality of the circumstances" make Ford's decision to approve Hillcrest's application ill-advised and inappropriate. To support that argument, District 2 alleged that parking requirements at the center were not "optimal" when Hillcrest filed its application because the lot contained 55 fewer parking spaces than would be required if the center were built today. It also argued that bingo players

usually arrive at the same time, and not in stages, thereby placing a strain on other businesses when the bingo hall opens and almost all of the other businesses allegedly remain open. It further argued that the hall's hours overlap the hours of nearly all other businesses. None of those arguments are persuasive.

The center is in full compliance with parking laws, whether optimal or not, and the record shows that ample parking is available, even at peak periods, when the bingo hall is open. Even if not optimal, the number of spaces certainly is adequate. The argument that the bingo hall's hours of operation overlap the hours of virtually all other businesses in the center is wholly inconsistent with evidence in the record showing that there are ample nonoverlapping spaces to cover Hillcrest's shortfall when it will be in operation. The ALJ is persuaded that District 2 has failed to show circumstances making the approval of Hillcrest's application ill-advised, arbitrary or capricious.

Brian McMahon, a community program organizer who has an architectural degree, questioned the adequacy of parking spaces in the back of the center along and about vacated Gary Place where 13 new spaces are being added. Some of his criticisms relate to existing facilities. There is no evidence that the size or location of existing facilities have been a problem. McMahon also testified that it would have been preferable if the 13 new parking spaces were longer and wider, but he admitted that they comply with current parking rules. The new spaces are usable, and even though more maneuvering room would be preferable, there have been no reported problems. This is likely due to the fact that most deliveries are made during the day when there is not a heavy demand for parking spaces. Because the bingo hall is not open when delivery trucks are present, the 13 new spaces do not have an adverse affect on them. The 17 new spaces behind the bingo hall are adequate in all respects, even though some pooling of water may occur from time to time.

There is no evidence in the record suggesting that the bingo hall will cause some traffic to overflow onto adjacent streets. Gary B. Unger, a nearby resident, testified that the rear entrance to the hall will cause more parking on the street. However, that door will be used for employees only. Hence, it will not encourage on-street parking, Ford expects no overflow.

Immediately south of the center across east Iowa Avenue is the Hillcrest Entertainment Center. Ford did not consider the effect, if any, that the bingo hall will have on that business. However, there is no evidence that there will be any adverse effects.

J.L.L.

^[1] City Exhibit 2.

^[2] City Exhibit 3.

^[3] District 2 is one of 17 nonprofit neighborhood corporations that serve residents in 17 different planning districts within the city. The districts – sometimes referred to as citizen participation districts – attempt to involve citizens in public issues. Each district has a volunteer board elected by district residents and a paid staff.

^[4] City Exhibit 4.

^[5] City Exhibit 8 (Hillcrest Rent Roll)

^[6] These figures are taken from City Exhibit 8 (Hillcrest Rent Roll). The required off-street parking spaces were computed using the requirements in section 62.103 (g) of the code.

^[7] This was erroneously calculated by LIEP, which found 113,484 square feet.

^[8] Actually, 82 additional parking spaces would be required, but Hillcrest is adding 30 new spaces on Gary Place. That reduces the number of additional spaces Hillcrest must provide to 52.

^[9] The tenants and their parking needs (in parenthesis) are as follows: Kees (5), Ronalds (5), Snyder Drug (50), Payless Shoes (15), Video Update (14), Park Gift (25), Subway (12), Simeks (12), Big Dollar (34), Salvation Army (44), H & R Block (5), Hair Junction (4), Angelo's Pizza (13), Radio Shack (11), Best Steak (24), and Big Wheel (22).

^[10] The tenants and their parking needs (in parenthesis) are as follows: Kees (5), Snyder Drug (50), Video Update (14), Subway (12), Angelo's (13) and Best Steak (24).

^[11] The tenants and their parking needs (in parenthesis) are as follows: Kees (5), Snip N Clip (6), Snyder Drug (50), Payless Shoes (15), Video Update (14), Park Gift (25), Subway (12), Simeks (12), Big Dollar (34), H & R Block (5), Tobacco Outlet (5), Angelo's Pizza (13), Radio Shack (11), Best Steak (24) and Big Wheel (22).

^[12] City Exhibit 8.

^[13] Id

^[14] Applicant reply brief at 2.

^[15] Exhibit C.

^[16] City Exhibit 8.